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Eleventh periodic reports of States parties due in 1990

Addendum

[13 July 1991]

COSTA RICA*

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* The present report constitutes the tenth and eleventh periodic reports of Costa Rica, due on 5 January 1988 and 5 January 1990 respectively, submitted in one consolidated document.

For the eighth and ninth periodic reports submitted by the Government of Costa Rica and the summary records of the meetings of the Committee at which those reports were considered, see:

(8) CERD/C/118/Add.31 (CERD/C/SR.794-SR.795)
(9) CERD/C/149/Add.15 (CERD/C/SR.794-SR.795).

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4. "Protection of indigenous rights in Costa Rica". (List of the regulatory executive decrees). Rubén Chacón Castro. Conai, July 1988.

5. Action on behalf of indigenous peoples in Costa Rica. Conai, Ananias Matamoros Carvajal, 1990.

6. Indigenous reservations in Costa Rica. 2nd edition. Luis A. Tenorio A. 1988.

7. National Commission for Indigenous Affairs, 10th anniversary, 1973-1983. CONAI Achievements and objectives. Report by the Governing Board, July 1983. Re: Establishment of Conai.

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* Copies of these documents, in Spanish, are available in the Secretariat files for members of the Committee who wish to consult them.

Chapter I

TERRITORY AND POPULATION

A. Territory

1. Situation

1. The Republic of Costa Rica lies in the geographical zone at which the Central American isthmus narrows and slopes towards the east; it is bounded by Nicaragua to the north and Panama to the south-east. The remainder of the territory is flanked by the Pacific Ocean to the west and by the Caribbean, a part of the Atlantic Ocean, to the east. The territory of Costa Rica is in the northern hemisphere in relation to the equator, and the western hemisphere in relation to the Greenwich meridian.

2. Shape and size

2. Roughly trapezoidal in shape, Costa Rica's length and width extend diagonally in respect to its geographical coordinates, something which protects the country from the redoubtable Caribbean cyclones and means that the ratio of 1:2.5 between the two dimensions is not disproportionate. Costa Rica's surface area, covering 51,100 square kilometres, exceeds only that of El Salvador and Belize in the Central American isthmus and is exceeded only by Cuba and the island known as "Hispaniola" in the Caribbean islands. The country includes various coastal islands in the Pacific and one island in the Caribbean (Uvita, opposite Limón).

3. Position

3. Vis-à-vis its immediate setting, the American continent, Costa Rica is in all respects in a favourable position, being equidistant from North America and South America. The Caribbean, which is also called the American Mediterranean, brings it into contact with the West Indies and the countries that give on to the Gulf of Mexico. It has links with its Central American neighbours and with Mexico and the United States to the north and to the south it has access to the Andean countries.

4. Economic structure

4. The economy of Costa Rica as a whole is in a very much better organized and balanced state than the rest of Central America, yet typical of a developing country. The basic exports are commodities which are excessively dependent on price variations on the international market. Industry, although growing, is still in its infancy and increasingly expensive machinery and capital goods have to be imported. Consequently, inflation and the increasing foreign debt are among the more negative features.

5. Agriculture employs 33 per cent of the Costa Rican population and accounts for somewhat less than 20 per cent of its Gross Domestic Product (GDP). Arable land accounts for 10 per cent of the nation's territory, while 41 per cent consists of pasture and almost 34 per cent

of forest. The cultivated land is divided into two main groups: the valleys and depressions used for growing coffee and sugar cane (family smallholdings next to large estates run on commercial lines), and the lowland which is divided into large plantations growing bananas and, in recent decades, cocoa and African palm, and is owned mainly by export companies.

6. The Costa Rican economy therefore appears to be excessively vulnerable to decisions made by the major international financial centres. This picture, characteristic of Latin America in general, is tied in with the still rudimentary industrial potential of the country, which is striving, in the difficult conditions brought about by the international economic crisis which began in 1974, to diversify its production, to become self-sufficient in a number of manufactured products and to prevent the impoverishment of its low-income groups.

(a) Agricultural sector

7. Two export crops, coffee and bananas, have accounted over the past 40 years for an average of 70 per cent of Costa Rica's agricultural production. The traditional crop, coffee, yielded pride of place to bananas from 1970 onwards (on average 90,000 t for coffee and 1,300,000 t for bananas each year throughout the decade). Cocoa and sugar cane have been acquiring increasing importance and the African palm has recently been introduced on the Pacific coast. These figures explain why Costa Rica, a typically agricultural country, is obliged to import a large proportion of the food it consumes.

8. For much of the last century and the first 50 years of the present century, coffee growing was the focal point of the country's economy and political development. Coffee bushes were planted from 1808 onwards round the main population centres of the central region at heights ranging from 800 to 1,400 metres. In addition to good soil and an ideal climate, a successful crop was assured by the fact that the urban centres provided the abundant labour necessary for the harvest during the period from October to December. Coffee was long Costa Rica's only important export, giving rise to a coffee-grower oligarchy whose influence was decisive in shaping the Costa Rica of today.

9. The attempts to diversify agricultural production made by nearly all the Governments from 1948 onwards were crowned in the early 1970s by a marked increase in the production of cocoa, a plant native to America and already grown at the time when the Conquistadors arrived, and sugar cane, as a result of the higher import quotas granted to Costa Rica by the United States of America. African palm, tobacco and cotton complete this picture of the country's industrial crops.

10. In general, agricultural production for the domestic market (fruit, beans and rice) has experienced something of a boom, due mainly to the efforts of Costa Rican Governments, which have tried to expand the market by making a number of crops hitherto used solely for personal consumption profitable. Efforts have also been made to diversify agricultural activity so as to move beyond the single export stage.

(b) Stockbreeding

11. Almost 80 per cent of Costa Rica's bovines are concentrated in the provinces of Alajuela, Puntarenas and Guanacaste; production peaked halfway through 1975 with 1,722,000 cattle and 280,000 pigs. There were 114,000 horses including the mules which are essential even today as a means of transport in many regions of the country. Since 1980, stockbreeding has shown a tendency to stagnate; however, it is a new factor in the traditional pattern of the Costa Rican economy, since it means that heifers can now be exported to Venezuela, Ecuador and Peru, thereby helping to reduce the trade deficit.

12. Costa Rican stockbreeders have found the by-products industry risky and unprofitable, since it has to compete with imported products offered at increasingly low prices. Consequently, investment in developing it is slow and extremely cautious. Cows used for milk production are concentrated in the Valle Central and on the slopes of the Sierra Volcanica Central and produce dairy surpluses which have made it possible to export powdered milk, cheeses and pasteurized milk. Of the meat packers, only Montecillos processes exclusively for the domestic market. Some 95 per cent of Costa Rica's meat is exported to the United States to make sausages and hamburgers, since lean meat, from an animal fed on grass, is cheaper imported than produced from cattle fed on a diet of cereals.

13. Although stockbreeding is less profitable than coffee or industrial activity, the State has acted as a redistribution mechanism channelling resources from agriculture to stockbreeding and thereby increasing the opportunities for development and consolidation.

(c) Fishing

14. Over the last 20 years, fishing has shown an increasing tendency to be concentrated on the Pacific coast; the waters of the Caribbean only provide the Costa Rican economy with a small annual amount of lobster and green turtle. On the Pacific coast, however, fishing is more abundant although it is carried out by mainly traditional methods. At the end of the 1970s, Costa Rica had a fishing fleet of 79 shrimp boats, 11 sardine boats and 5 tuna boats as well as some 500 small craft of widely varying capacity. The Fisheries Development Plan, approved by the State in 1977, considerably encouraged the fishing sector, although the investment planned by the Government was curbed mainly by the country's difficult financial situation.

15. At the present time, the traditional fishing sector supplies between 30 and 40 per cent of Costa Rica's domestic consumption (sardine, corvina, mackerel and sea bass). The fishery by-products industry is very modest, although there are factories engaged in freezing, canning and fish-meal production. At the end of 1988 the State had a fishing fleet capable of producing some 20,000 t of various species each year. Most of this production is for export.

16. A more aggressive policy is needed on the part of the State, particularly with a view to signing a new agreement on tuna fishing, which is one of Costa Rica's main sources of wealth in the Pacific. National interests should be defended in this sector by expanding the fisheries infrastructure, since it is one of the country's most important foreign exchange sources.

(d) Mining

17. Mining has not had and is not likely to have in the near future too much importance in the economic development of Costa Rica. According to official data, at the end of the 1980s and beginning of the 1990s, mining, which employs less than 1,500 persons, only contributed 1 per cent to the Gross Domestic Product (GDP). Last century, however, exports of gold bars were one of the main sources of the country's wealth, but the Tilarán and the Aguacate hills deposits were largely worked out by the early decades of the twentieth century and annual production stands at nearly half a tonne; gold is now extracted in the Osa Peninsula, the beaches of Carate, Madrigal and the vicinity.

18. The iron oxide in the Nicoya Peninsula, discovered in 1960, and the sulphides at San Carlos which began to be mined in the 1970s have not been enough to reactivate the weak mining industry. In the mid-1980s it amounted to no more than extracting non-metallic minerals such as limestone, sandstone, silica, travertine and kaolin. Prospecting operations conducted from 1970 onwards have shown that in the uplands there are deposits of copper, silver, manganese, chromite and zinc and lead sulphides, although the quantities are not known. Recent oil prospecting operations in the Baja Talamanca have yielded the same result.

19. Salt extraction by evaporating sea water has led to the formation of a cooperative in the Nicoya Peninsula that was expected to export its production to the Central American Common Market at the beginning of this decade. As far as the bauxite deposits at San Isidro de El General are concerned, State plans intend this deposit to be used in order to set up an aluminium industry (sheets and bars) capable of creating a large number of jobs. If this end is to be achieved, the Boruca hydro-electric project in the Rio Grande de Terraba must be carried out.

(e) Industry

20. Light industry achieved maximum expansion at the end of the 1970s at the same time as Costa Rica entered the Central American Common Market; during that period, generous tax legislation attracted foreign, especially United States, investment. The rate of expansion may be measured by the following data: the industrial sector contributed 14.2 per cent to GDP formation, in 1950, 21.2 per cent in 1974 and seemed likely very soon to overtake the primary sector, which was stagnating at 22 per cent.

21. The crisis generated by the increase in fuel prices and the disturbed international market slowed down the growth of the industrial sector. In the mid-1980s, the balance between the primary sector and industry was approximately the same as in 1974, when the process peaked. At the time, the secondary sector employed 19.8 per cent of the active population.

22. The coffee and sugar-cane industries lost their place at the head of the sector in 1960; from then onwards foreign capital was diverted to the more dynamic branches of the economy. The assembly industry, oil refining (in Puerto Limón), the chemical industry (fertilizer production) took off and textiles, furniture production and transport and building materials boomed.

(f) Industrial concentration

23. At the beginning of the 1980s, there began to be a shortfall in the electric power sources used to supply industry. The country had 632,000 kW of installed power, including 437,000 kW from hydroelectric sources. This factor, in conjunction with a variety of other factors - demographic, political, availability of services, transport facilities - has meant that three quarters of industrial activity is concentrated in the four central provinces around San José.

24. Thus, the outskirts of the capital of Costa Rica are in danger of becoming an industrial conglomerate. The disadvantages of this excessive concentration - which is a contributory factor in making light industry even more vulnerable - are regarded by Costa Rican official sources as "the price that has to be paid for industrial development". At the same time, another kind of concentration has been taking place, namely, small- and medium-sized industries with national capital have been replaced by major industrial enterprises with United States or European capital.

(g) Import substitution

25. Notwithstanding the disadvantages and limitations indicated, the introduction of light industry entailed a genuine revolution in Costa Rican social life. Until the end of the 1950s, there were only family businesses, 72 per cent of which did not even use electric power. From 1960 onwards, a period of development began and, as a result, the annual economic growth rate often reached 9 per cent, a rate considerably higher than that of the countries of the region.

26. During that period, all the signs seemed to indicate that Costa Rica, a member of the Central American Common Market since 1960, was set to change its productive structure gradually and to replace the externally-oriented development model, exemplified by the agro-export sector, by another model capable of generating a less dependent economy. However, the main sectors in industry (the chemical and metallurgical industries) used imported raw materials, exported most of their profits and were a constant drain on the country in terms of royalties and transfer of technology. In short, investment in the secondary sector was channelled towards consumption rather than towards than the production of capital goods (machinery, tools and equipment); the outcome was that industrial development did not move beyond import substitution.

(h) Industrial development

27. Despite the features of the expansion of light industry in Costa Rica, in the 1970s there were mistakable signs of modernization. Agriculture and livestock breeding employed only 33 per cent of the work force, while the

services sector accounted for more than 42 per cent. Within this sector, there was a remarkably large number of public officials; over 20 per cent of all Costa Ricans of working age.

28. With the world economic crisis in 1973, Costa Rica's GDP, which until that time had grown steadily, started to slump alarmingly. In 1978, the growth rate was 6.3 per cent, while the following year it fell to only 3.3 per cent and in 1980 to only 1.7 per cent. This trend towards stagnation continued in the first five years of the 1980s. As well as the international crisis, other economic factors such as the rise in oil prices, the decline in export prices and the uncontrolled growth of the foreign debt further complicated the economic situation.

29. The current social and political situation in Central America, namely, economic stagnation in the other countries, seems to offer good opportunities for Costa Rica to become a successful supplier of manufactured goods for the Central American Common Market. These favourable prospects may give fresh impetus to the national economy.

(i) Banking

30. The reform undertaken in 1936, the main effects of which were greater State intervention in banking activities and the redistribution of the State bank, was an important development in banking. In 1948, under the Founding Junta of the Second Republic, banking was nationalized and article 1 (a) of the decree established the exclusive authority of the State to mobilize monetary resources.

31. The reorganization that followed the nationalization process consisted in incorporating banks in what was known as the National Banking System, composed initially of the following banking institutions: Nacional de Costa Rica, Anglo-Costarricense, Crédito Agrícola de Cartago and the Banco Lyon. Although the latter was a private institution it did not handle deposits. As a result of nationalization, agricultural and industrial credits were given preferential treatment and banks turned their attention towards other areas in an attempt to ensure that the limited capital available was channelled towards genuinely productive sources. The growing liberalization of the system has made it possible to incorporate other institutions, such as the Santander, Construcción, San José and Latinoamericano banks. Moreover, the Central Bank is the institution responsible for issuing currency, regulating credit and foreign exchange.

32. The credit sector attempted, in particularly difficult circumstances, to move towards the non-traditional sectors of agriculture, at least until the early 1980s. However, the overwhelming majority of small landowners had to fall back on non-bank credits, due to the unsatisfactory funding conditions offered by official institutions. This situation halted the process of self-sufficiency in certain food products which Governments had wished to encourage.

(j) Foreign trade

33. Although the policy of export diversification led to a decline in Costa Rica's foreign debt to neighbouring countries from 1972 onwards, the country is experiencing a rapid growth in its indebtedness to the major industrialized countries. The situation is particularly critical for Costa Rica, for the United States of America accounts for 32 per cent of the country's exports and 33 per cent of its imports. Costa Rica's main clients include the Central American Common Market with 21.5 per cent and the European Common Market with 22.5 per cent. Japan, Venezuela and Guatemala are important suppliers. In recent years, the Soviet Union has considerably increased its trade with Costa Rica, and coffee is exchanged for machinery.

(k) Transport and highways

34. In any country's infrastructure, transport plays a decisive role in developing the economy. In Costa Rica, roads and means of transport arrived too late on the scene to resolve the problems of links between the various regions and between the centre and the periphery. The road and rail networks scarcely cover the most pressing needs and were organized initially in order to meet the requirements of the coffee plantations and subsequently the banana plantations. Some regions continued to be isolated until the need to export a specific product called for a railway line to be laid from the haciendas to a port. Other regions still depend on slow river navigation or on rapid, but expensive, airlines to communicate with each other or transport their products. It is a fact that building highways or laying railways is arduous and costly because of the difficulties encountered in working on mountainous terrain where there is rain all year round.

35. From colonial times until the middle of the nineteenth century, the only communications were the "mule track" or Camino Real from Nicaragua, which passed through Guanacaste, Espíritu Santo de Esparza and Cartago and went southwards to the Dulce Gulf and Panama, and a track linking Cartago to Matina through the Reventazón valley. In the second half of the nineteenth century, the desire to bring new land into use for agriculture and the need to export the coffee grown in the Valle Central boosted road building. Contingents of migrant workers opened up paths in the direction of the outlying areas (Sarapiquí and the El General Valley) and the coffee plantation owners promoted the construction of the "cart track" linking the towns of the Valle Central with Puntarenas, whence the coffee was exported to Europe initially via Cape Horn, and later through the Panama Canal.

36. In 1942, in the middle of a world war, the construction of the Inter-American Highway went ahead. The Highway was to bring about a spectacular change in the country, particularly in the regions through which it ran or with which it was linked by branch roads. Thus, Guanacaste reactivated its stockbreeding economy and the valley of El General-Coto Brus found outlets for its products. Completed in 1963, the 660 km across the country from north-west to south-east, like a large "central avenue" passing through San José. The most recent major road-building project is the

San José-Limón Highway, which complements and even offers serious competition to the railway. Since 1985, work has been proceeding apace to complete the southern coastal highway, which, stretching 240 km between Esparta and Palmar Norte, forms part of the regional road-building programme for the development of Central America.

(l) Railways

37. There is a comprehensive programme to extend and modernize the coast-to-coast network and it envisages linking up lines in order to convert the railway system into a kind of "dry canal" alternative to the Panama Canal route.

(m) Ports

38. Shipping has been very active since the second half of the eighteenth century. Initially, Puntarenas was built as the port for Nicoya and the basin of the Tempisque. Later on, Limón began operations on the Caribbean shortly before the railway was inaugurated. On the Pacific, ports were built at Quepos in the central zone, and Golfito in the Dulce Gulf. Puntarenas and Limón require considerable maintenance and modernization work, because they are poorly situated, shallow, accumulate sediment and are exposed to the prevailing winds.

39. This has led to the building of new supplementary ports. Moín, some 7 km west of Limón, is used for discharging oil; in the vicinity there is a thermoelectric station with a capacity of 40,000 kW. The Limón-Moín system constitutes a considerable saving since boats do not have to wait so long in order to be serviced. The port of Caldera has been sited 15 km south-west of Puntarenas in order to relieve the pressure on the old port. Its up-to-date facilities include breakwaters, a mole, a bridge, a lighthouse, buoys and administrative buildings; in addition, the highway has been improved, there is a railway branchline from Salinas and electricity comes from Esparza. Port facilities (a weighing platform, a cargo platform, steelyards and conveyor belts) have been installed at Punta Morales, 8 km to the north-west of Puntarenas since 1975. They provide a sugar unloading capacity of 600 t an hour and storage capacity of 40,000 t.

(n) Aircraft

40. Aircraft have been widely used for transport in Costa Rica, particularly at times when the road and railway networks were not able to meet the needs of much of the territory. Although there are still parts of the country that depend on aircraft for communications, at present land communications are in competition with aircraft due to lower costs. There are 13 airports with 173 runways located, inter alia, in the towns of Liberia, Limón, Golfito, Quepos, Río Frío, Parrita and Puerto Cortés. Juan Santa María International Airport is located 16 km from San José and the national airlines are Líneas, Aéreos Costarricenses S.A. (LACSA) and Servicio Aereos Nacionales S.A. (SANSA).

B. Population

1. Composition by age

41. Demographic trends can be analysed on the basis of the size of the different age groups of the Costa Rican population and their historical pattern in order to preserve them or plan measures to modify them. The proportion of the population for each age group is as follows: under 14 years of age, i.e. the temporarily inactive population, 43 per cent; between 15 and 64 years of age, i.e. the potential active population, 53 per cent; over 65, i.e. the retired population, 4 per cent.

42. There is a close link between the size of the first group and the trend in birth rates and infant mortality rates. The percentage has remained between 41 and 43 per cent since the middle of the last century, with the exception of the 1963 census, when it rose to 47 per cent, at the time when Costa Rica began to use birth control measures and family planning to check inordinate growth. The measures had developed in response to similar measures adopted throughout the world.

43. The second group, the potential active population, has varied from 53 to 57 per cent over the last hundred years, with a 50 per cent low in 1963. This group is principally characterized by the flow of adult immigrants who have come to Costa Rica from bordering countries and from the West Indies to work on plantations.

44. The percentage of the population aged over 65 is linked to average life expectancy, which was fairly low until recently. However, in contrast with the two other age groups, this group has slowly but surely increased from 2 to 4 per cent as a result of the improvements achieved by the State in social welfare and security.

45. Costa Rica's demographic structure is that of a youthful population; the dependency ratio between the working population and those who do not work is extremely disadvantageous: there are 1,000 individuals of working age for every 1,049 not of working age (temporarily or definitively). However, as only 30 per cent of the economically-active population is actually employed, the ratio is even more unbalanced; for every 1,000 persons with work there are 2,333 dependants. This phenomenon is influenced by the social status of women, which is nevertheless gradually changing. In 1950 only 14 per cent of women worked, while the current figure is 23 per cent. However, the percentage of women on the labour market is still very low. In addition, life expectancy at birth has increased considerably. If the present health situation is maintained, and if improvements to nutrition and pre-natal care continue, life expectancy will rise.

2. Composition by sex

46. In this respect it is a universal demographic law that male mortality is higher during the first year of life and in old age; in other words, more girls survive and their life expectancy is greater. Consequently, there are slightly more women than men. Nevertheless, in Costa Rica the proportion of

men and women is well balanced, with each sex accounting for approximately 50 per cent of the population, although it varies as between regions, depending on whether the population is predominantly rural or urban.

47. The number of men rises considerably in mining areas or regions in which the economy is based on forestry or on plantations. Thus, the sex ratio - which indicates the number of men for every 100 women - is 122 in the province of Limón and 109 in the province of Puntarenas, with a predominantly rural population. In contrast, the ratio is lower in areas with a mainly urban population, such as San José canton, where there are 86 men for every 100 women, and in the capital, where there are 90. The differences are clearly attributable to the fact that in a rural environment the type of labour requires male workers and mainly attracts men, whereas women tend to migrate from the countryside to urban areas in search of factory or office work, or in domestic service, where working conditions are not so hard, and they also try to live close to higher education centres.

3. Composition by nationality

48. Foreigners have come to Costa Rica for various reasons throughout its history, on account of internal and external circumstances. The banana and cocoa plantations attracted a large population from neighbouring countries and from the West Indies, particularly in the boom years for those crops. In addition, political circumstances in Central and South American contries have caused many exiles to seek refuge in Costa Rica. The low population density in comparison with Central American neighbours, in conjunction with the employment opportunities offered by Costa Rica, with regions that have still to be settled, are powerful magnets. Since the 1950s individuals with high incomes, mainly United States citizens, have settled in Costa Rica, where they enjoy favourable economic circumstances, backed by political stability and the sociable character of the Costa Ricans.

49. The numbers of the foreign population are determined by circumstances in the countries of origin. Nevertheless, Nicaraguans have always predominated over other foreigners. There have also been many Panamanian immigrants. Jamaicans, who arrived in the last quarter of the last century to work on the plantations, constituted a high percentage of foreigners until the 1927 census. The number of Europeans, which was very high until the beginning of this century, began to decline after 1920, while the number of United States citizens increased after 1950, for the reasons mentioned above. During the 1980s there was a huge inflow of Central Americans, mainly Salvadorians and Nicaraguans, as a result of the political instability of the countries in the region. These various reasons, together with naturalization, death and repatriation, have led to considerable fluctuations in the percentage of foreigners settled in Costa Rica, as revealed from one census to the next. The figure fell from 9 per cent in 1927 to 2 per cent in 1963, before rising to 8 per cent in 1973 and 10 per cent at the present time.

4. Trends in vital indices

50. From an analysis of population figures from censuses taken at approximately 10-year intervals, it is apparent that the population grew slowly until 1940, when it soared and doubled in little more than 20 years.

The increase coincided with a demographic explosion, i.e. the birth rate reached its highest levels (48.2 per cent between 1950 and 1959) and the overall, and infant, mortality rates fell gradually as a result of improvements in welfare.

51. The birth-control campaign which began in the 1970s through the popularization of family planning under the guidance of the Costa Rican Demographic Association and the Pan-American Health Organization achieved satisfactory results. The birth rate began to decline until the 1975-1979 period, when it fell to 23.4 per cent, thereby bringing down the rate of population growth to 19.9 per cent and dispelling fears of inordinate growth, which heralded a population of 7 million by the year 2000. Nevertheless, in the 1980s there was a marked increase in fertility, the reasons for which are as yet undetermined, since it is a recent phenomenon.

52. The falls in fertility and the vegetative growth are not attributable to a fall in the marriage rate, which has remained stable: 6.8 per cent in 1958 and 7.4 per cent in 1974. This means that there has been a decline in the number of children per family, i.e. the nuclear family has fallen in size, partly on account of the increase in the urban population: more people live in towns and cities and experience the corresponding restrictions on housing, work and per capita income.

53. As already observed, the mortality rate declined to 3.5 per cent during the 1970s, since when it has remained stable. The low level of mortality is attributable both to the improved living standards of Costa Ricans and to Costa Rica's youthful population structure: in other words, there are few people aged over 65. When more people reach this age, as a result of increased life expectancy, it is likely that the mortality rate will cease to decline, or will even increase slightly. The infant mortality ratio has fallen sharply, a sure indicator of a rise in living standards, which means that social welfare and sanitation are more efficient and that they reach most of the country's regions and social strata.

5. Other indicators

54. This demographic overview of Costa Rica needs to be completed by a description of the trend in a number of significant indicators. Illiteracy has fallen to acceptable levels thanks to the efforts by the authorities to improve the educational infrastructure, even in the remotest parts of the country. The rate currently stands at 3 per cent.

55. The life expectancy of Costa Ricans has risen in recent years: it is 66 for women and 70 for men. The trend in morbidity among the population, i.e. the diseases to which death is most frequently attributable, illustrates the changes in lifestyles. Whereas malaria and parasite-borne diseases in general caused ravages at the beginning of the century, they have now been eradicated. However, in contrast there has been a rise in diseases such as malignant tumours, traffic accidents, violent deaths and nervous disorders typical of highly developed urban areas.

6. Geographical distribution

56. European settlers chose the Valle Central (Central valley) for their first settlements. This central nucleus is still the area of greatest demographic concentration, with densities in excess of 5,000 inhabitants per square kilometre. In 1801, 83 per cent of the population lived in the Valle Central, a figure which has currently fallen to 62.3 per cent. Although this means that more than half the total population still lives there, if the figure is compared with previous ones, it reveals a trend towards a more balanced distribution of the population. There are major underpopulated areas in Costa Rica, in particular in the north-west (the Tortuguero plain) and on the western slopes of the Talamanca range. In fact, with the exception of the corridor between the Valle Central and Limón, the rest of the Caribbean region is virtually uninhabited: it has only 6 per cent of the total population.

7. Urban and rural population

57. The preponderance of primary activities (agriculture, stock-breeding and forestry) in the Costa Rican economy means a highly scattered population living in hamlets and small villages of less than 2,000 inhabitants - the universally accepted figure for a population centre to be classed as urban. With this figure, less than 50 per cent of Costa Rica's population can be classed as urban (52.7 per cent of the population, i.e. 1,341,555 inhabitants, is rural). However, if the calculation is based on the economically active population involved in primary activities, the percentage falls, no doubt on account of the growing use of machinery, which cuts down the manpower in the primary sector.

58. Like all Latin American countries, a feature of Costa Rica is the sharp contrast between town and country. In other words, part of the population lives in the main city, which is generally the capital (San José accounts for 23 per cent of the total population), and the remainder of the urban population is found in a number of smaller cities: Limón (55,400 inhabitants), Alajuela (43,500 inhabitants), Puntarenas (36,400 inhabitants), Heredia (30,350 inhabitants), Cartago (28,700 inhabitants) and Liberia (23,800 inhabitants).

8. Internal and external migration

59. For various reasons, ranging from the search for work to the hope of a better standard of living, and including the purchase of arable land, the desire for a better education, marriage, etc. the internal mobility of the Costa Rican population is quite high. Trends among some groups are more or less stable. For example, young and single women generally move from the countryside to urban centres where they are able to find lighter, better paid and more suitable work; the elderly are also attracted to the towns and cities, where the environment is more comfortable and supportive; there is a tendency for men of working age to move to agricultural, forestry or mining areas, where there is a demand for labour and where wages are attractive; the poorer peasants move on to unsettled areas to obtain land, in general under precarious circumstances.

60. The city of San José has been a strong magnet for population groups who have come to work in industry and in the services sector. However, over the last 15 years there has been a reversal in this process on account of the transformation of the urban centre into administrative centres, which has caused the population to move and settle in outlying districts (Goicoechea, Montes de Oca, Moravia, Alajuelita and Curridabat).

61. The South Pacific region, particularly the canton of Golfito, also has a high level of net immigration, while the population is constantly drained away from the North Pacific (Guanacaste), mainly towards Puntarenas and the Valle Central. In addition, a large number of people move into Costa Rica on account of social and political problems in the countries of origin and Costa Rica's better employment opportunities, low population density and stable democracy.

9. Ethnic groups

62. According to contemporary surveys of ethnic groups on Costa Rican territory during the eighteenth century, the number of Spaniards fluctuated considerably until the beginning of the nineteenth century, when it more than doubled. The indigenous population fell by half, and Africans recruited for manpower fell to one fifth of the original number. As a result of the mixing between population groups during that hundred-year period, the number of mestizos increased almost 150-fold and numbers of mulattos and Afro-Indians seven-fold.

63. One hundred and eighty years after these censuses, which are not fully reliable in view of the difficulty of classifying the population to groups with ill-defined boundaries and of obtaining an exhaustive count, the population has acquired clear ethnic characteristics. The European population has come to dominate the ethnic mix and Costa Rica is nowadays a white enclave within Central America. The black and mulatto minorities mainly live on the Caribbean coast (Limón).

10. Indigenous groups

64. There is no reliable estimate of the number of indigenous people surviving in Costa Rica; the figure of 19,050 has been advanced for this group, who live on reservations and account for 1 per cent of the country's total population. In addition to being geographically and socially marginalized, Costa Rica's indigenous population deliberately and tenaciously remains isolated and avoids any contact with the remainder of the population.

65. According to the study carried out by Dr. María E. Bozzolli, Localidades Indígenas de Costa Rica, the following areas are occupied:

(i) Guatusos: In the Margarita, Tonjive and El Sol enclaves in Grecia canton, Alajuela province;

(ii) Cabécar: In the following settlements: Chirripó, San José Cabécar, Urinama, Tuis, Moravia (Chirripó) and in hamlets along the Chirripó, Tarire and Estrella rivers;

(iii) Bribrí: In Sipurio, Suretka, Amubri, Sibube, Sepecue, Shiroles, Bris, Katsi, Atlanta, Uren, Coroma, Yorkín, Vesta, Chase, Punta Coclés, Manzanillo, Puerto Viejo, Talía, Paraíso, Costa Rica (Sixaola), Piedra Grande, Volio, Fields, Home Creek, Telire, Daytonia, Bordon, Concepción de Atalanta, Cahuita and other hamlets along the Coen, Lari and Urén rivers as well as in Salitre and Cabagra;

(iv) Borucas: In Boruca, Curré, Caña Blancal, Rey Curré, Cajón, Mano de Tigre, Bijagual, Lagarto, Chánguina, Puerto Nuevo, El Maíz and Buenos Aires;

(v) Térrabas: In Térraba and hamlets on the Boruca reservation;

(vi) Nicoya: Some indigenous features may still be found among the Matambú, Santa Bárbara and Guaitil populations;

(vii) Tiquirrisí: Indigenous features may also be found in Ciudad Colón and Puriscal.

66. The Cabécar are so isolated that most of them do not speak Spanish. They are hunters, fishers and gatherers. They eat rice, beans, yucca and occasionally peccary or monkey meat. They do not sell their game directly on markets, but through middlemen. They still use the blowpipe and bows and arrows. Their medicine man, the sukía treats his patients with herbs. In contrast, there are some links between the Bribrí and the white population. In the past, technicians from the Costa Rican Petroleum Refining Company (RECOPE) entered their region and drilled for two years. Some members of the group travel to Limón to barter products.

67. Many laws and decrees have been enacted to protect the indigenous population. On 9 January 1973 the National Indigenous Affairs Commission (CONAI) was set up to promote the social, economic and cultural well-being of the indigenous population. In view of the abuses suffered by the native population, in 1977 the Government also adopted an act to distribute 140,000 hectares to help to improve the conditions in which they live. There are currently 11 reservations, inhabited by 25,108 individuals, 19,050 of whom are indigenous. The five largest reservations are Chirripó, Estrella-Telire, Ujarraz-Cabagua-Salitre and Boruca-Térraba.

Chapter II

GENERAL POLITICAL STRUCTURE OF COSTA RICA

A. Constitutional development of Costa Rica

1. Provisional fundamental social covenant of the State of Costa Rica, or the Covenant of Concord

68. The Covenant of Concord was the first Constitution of Costa Rica. It was drafted by the second Council of Representatives, which met in the city of Cartago in November 1821, during the presidency of Nicolás Carrillo, and was promulgated on 1 December 1821. Its main features were the following:

(a) The Government was in the hands of a Higher Governing Council consisting of seven full members and three alternates;

(b) Voting was indirect;

(c) There was no legislative power;

(d) The Council was to reside for three months in each of the major cities: Cartago, San José, Heredia, Alajuela;

(e) The only religion allowed in the State was Roman Catholicism;

(f) The judicial power was vested in the Constitutional Judges.

2. Fundamental Law of the Free State of Costa Rica

69. This law was promulgated on 25 January 1825, when Juan Mora Fernández was Head of State. The main features of the law included:

(a) The establishment of a Government divided into four powers: executive, legislative, judicial and conservative;

(b) An executive power consisting of a Head of State and a deputy Head of State;

(c) A legislative power consisting of an Assembly of 11 to 21 members;

(d) A judicial power consisting of a Supreme Court of Justice;

(e) A conservative power equivalent to a Senate.

3. Foundations and Safeguards Law

70. This law was promulgated on 8 March 1841, when Braulio Carrilo Colina was Head of State, and in it he declared himself to be Head of State for life and irremovable from office.

(a) The executive power was vested in a Head of State, who wielded considerable power;

(b) The legislative power was vested in an Advisory Chamber, which was subject to the decisions of the Head of State;

(c) The judicial power was wielded by a Judicial Chamber, which was also subject to the Executive.

The legislative and judicial powers were weak because of the supremacy of the executive.

4. Constitution of 1844

71. This Constitution was promulgated on 9 April 1844, when José María Alfaro Zamora was Head of State. Under this Constitution, the Government was divided into three powers: executive, legislative and judicial. The most important feature of this Constitution is that it established direct suffrage for the first time in Costa Rica:

(a) The executive power was vested in the Head of State;

(b) The bicameral legislative power was shared between the Congress and the Senate;

(c) The judicial power consisted of a Supreme Court of Justice.

5. Constitution of 1847

72. This Constitution was promulgated on 10 February 1847, when José María Alfaro Zamora was Head of State. It is very similar to the Constitution of 1844 except that it eliminated direct suffrage and lowered to 25 the age of eligibility to the office of Head of State.

6. Amended Constitution of 1848

73. This Constitution was promulgated on 30 November 1848, when José María Castro Madriz was President. The most important feature of this Constitution was that it published the decree which proclaimed Costa Rica an independent Republic. It introduced the present national emblems, the coat of arms and the flag, and also created the cantons.

7. Constitution of 1859

74. This Constitution was promulgated on 27 December 1859, when José María Montealegre Fernández was President. The legislature again became bicameral, the presidential term was reduced to three years and the President could not seek re-election.

8. Constitution of 1869

75. This Constitution was promulgated on 18 February 1869, when Jesús Jiménez Zamora was President. The most important feature of this Constitution was that it incorporated the decree establishing free compulsory primary education for both sexes, at Government expense.

9. Constitution of 1871

76. This Constitution was promulgated on 21 December 1871, when Tomás Guardia Gutiérrez was President. And it remained in force the longest, from 1871 up to 1917, when Federico Tinoco led a coup d'état against Alfredo González. Its effectiveness was restored in 1919 and was maintained until 1948. It also abolished the death penalty.

10. Constitution of 1917

77. This Constitution was promulgated when Federico Tinoco Granados was President and remained in force until 1919, when Tinoco was forced out of office and went to live in Europe.

11. Constitution of 1949

78. This Constitution was promulgated on 7 November 1949, when José Figueres Ferrer was President of the Governing Council. This is the Constitution that is in force today. The organizational part establishes the structure of the Government, its constituent powers and the institutions by which the country is governed, and it safeguards individual, social and political rights.

The most important features of the Constitution are the following:

(a) The number of Deputies was increased to 57;

(b) The Office of Comptroller General of the Republic was established as a body auxiliary to the Legislature;

(c) The president's term of office was set at four years and he is not eligible for re-election;

(d) The Supreme Electoral Tribunal was established;

(e) The age of majority was set at 18 years;

(f) Autonomous institutions were created;

(g) Women were granted citizenship;

(h) The General Civil Service Department was established;

(i) The Costa Rican army was abolished;

(j) Free secondary education was introduced.

B. Institutions and administrative division

79. The present democratic republican Constitution of Costa Rica is the most important achievement of the 1948 revolution and has given the country a unique role in the geopolitics of Central America. This Constitution was ratified on 7 November 1949 and was adopted with the support of an

overwhelming majority of the political forces in Costa Rica, and none of the conflicts which have occurred in the country since then has necessitated any substantial amendments.

1. Civil Guard

80. The most radical or at least the most spectacular innovation introduced by the Constitution of 1949 was the abolition of the army. For a country like Costa Rica, the cost of maintaining a regular army was very heavy. The presence of a corps of professional soldiers in a newly emergent civilian society such as that of Costa Rica inevitably tended to make the army chiefs the arbiters of political life.

81. For the Deputies who drafted the 1949 Constitution, the most urgent task was to ensure a modern and democratic system, one that was suited to a country in which the rural middle class, which owned small but profitable farms, formed the backbone of the economy. Consequently, they elected to make the police force responsible for defending the country and maintaining law and order. The chiefs of this force are appointed every four years by the President of the Republic. Almost 40 years since this measure was introduced, there are no political groups in Costa Rica - however radical - which have dared to advocate publicly that the force should be disbanded or changed. Under article 12 of the Constitution, the army was disbanded and maintenance of law and order and surveillance of the borders was delegated to the Civil Guard.

2. The Republic

82. Although it incorporates many of the features of the 1871 Constitution, the 1949 Constitution is the first in the history of the country to separate the three traditional powers of the State: the Executive, the Legislature and the Judiciary. Furthermore, article 9 of the Constitution defines the Costa Rican constitutional system as being "of the people, representative, alternating and responsible". None of the four adjectives inserted here by the people who framed the Constitution seems superfluous in a continent where the rights of the majority of the people are not always respected, where representivity is usually reduced to the amount of force at one's disposal, where rotation in office is the exclusive fiefdom of various factions of the dominant oligarchies, which do not always behave responsibly in protecting national interests.

83. In practice a fourth power has existed alongside the three usual powers. Although the Constitution makes no mention of it, it is of decisive importance in the functioning of the Costa Rican democracy and it is independent of the other branches. It is the Supreme Electoral Tribunal and it must call elections every four years.

84. Furthermore, during the inter-election period, the force responsible for maintaining law and order, in other words the Civil Guard, is placed directly under the courts of justice to ensure free and fair elections. The rationale for this measure is understandable, in view of electoral fraud in the past and quite ingenious manoeuvres to misrepresent the outcome of the voting.

3. Administrative Division

85. The administrative units in Costa Rica are, in ascending order: the districts, the cantons and the provinces, and their boundaries have remained virtually the same since colonial times. For purposes of administration, Costa Rica is divided into 7 provinces, 81 cantons and 411 districts. The provinces are as follows: San José, Alajuela, Cartago, Heredia, Puntarenas, Guanacaste and Limón.

86. In January 1978, preparatory to drawing up the blueprint for national socio-economic development, the Government divided the country into six regions, plus one metropolitan area around the capital, San José.

(a) Region I is the central region and consists of the cantons of the province of San José (Central, Escazú, Desamparados, Puriscal, Tarrazú, Aserrí, Mora, Goicoechea, Santa Ana, Alajuelita, Coronado, Acosta, Tibás, Moravia, Montes de Oca, Dota, Curridabat and León Cortés), the province of Alajuela (Central, except for the district of San Isidro de Peñas Blancas; Grecia, Atenas, Naranjo, Palmares, Poás, Alfaro Ruiz and Valverde Vega), the province of Cartago (Central, Paraíso, La Unión, Jiménez, Turrialba, Alvarado, Oreamuno and El Guarco) and the province of Heredia (Central, Barva, Santo Domingo, Santa Bárbara, San Rafael, San Isidro, Belén, Flores and San Pablo).

(b) Region II is the North Pacific region and consists of the cantons of Liberia, Nicoya, Santa Cruz, Bagaces, Carrillo, Cañas, Abangares, Tilarán, Nandayure, La Cruz and Hojancha, in the province of Guanacaste.

(c) Region III is the Central Pacific region, which covers the cantons of Puntarenas, Esparza, Montes de Oro, Aguirre, Parrita, Turrubares, San Mateo and Orotina.

(d) Region IV is the South Pacific region, which encompasses the cantons of Pérez Zeledón, Buenos Aires, Osa, Golfito, Coto Brus and Corredores.

(e) Region V is the Northern region and is made up of the cantons of San Carlos, Upala, Los Chiles, Guatuso, Sarapiquí (except for the district of Horquetas) and the districts of Sarapiquí, Alajuela, San Isidro de Peñas Blancas, San Ramón, Río Cuarto, Grecia.

(f) Region VI is the Atlantic region, which includes the cantons of Limón, Pococí, Siquirres, Talamanca, Matina and Guácimo, plus one district of Horquetas, Sarapiquí.

(g) The metropolitan area centres on the capital and includes the most densely populated cantons and districts in the country: 27.3 per cent of the Costa Rican population lives there. It is made up of the following cantons in the province of San José: Central, Escazú, Desamparados (except for the districts of Frailes, San Cristóbal Norte and Rosario), Aserrí (first district), Goicoechea (except for the district of Rancho Redondo), Alajuelita, Coronado, Tibás, Moravia (except for the district of San Jerónimo), Montes de Oca and Curridabat. Altogether, the area covers 184 square kilometres, an urban concentration that apparently cannot be halted.

Chapter III

GENERAL LEGISLATIVE FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

87. The Costa Rican Government drew on the Universal Declaration of Human Rights in order to strengthen its juridical institutions, seeking essentially to secure full development of the individual without distinction as to race, religion, sex, political or other opinion. The point of departure for this is the first paragraph of article 2 of the Declaration, which reads:

> "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

88. This provision was incorporated in Costa Rican legislation and became fully effective when it was adopted by the Legislative Assembly. In the legislative hierarchy it takes precedence over ordinary law, is subordinated to the Constitution and can be invoked at any time before the courts of justice, under the terms of article 7 of the Constitution:

> "Public treaties, international conventions and agreements approved by the Legislative Assembly shall, upon their promulgation or on the day specified by the Assembly, take precedence over the laws."

Similarly, this constitutional provision complements article 6 of the General Public Administration Act by referring to the legislative hierarchy. Consequently, it can be said that the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination, culminates in a series of measures taken by Costa Rica.

89. In keeping with its obligations under the various conventions prohibiting discrimination, Costa Rica has submitted reports on the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as reports to the Committee on the Elimination of Racial Discrimination (discrimination which includes the policy of apartheid), and it has been possible to assert that, from the legislative point of view, racial discrimination does not constitute a problem in Costa Rica because there is no restriction or inequality of opportunity on the grounds of racial or ethnic origin.

90. For example, Costa Rica's second periodic report on the International Covenant on Civil and Political Rights (CCPR/C/37/Add.10) states in regard to article 15, paragraph 2, concerning the application of penalties for international crimes, that:

> "55. In addition to the constitutional and legal standards set forth in the first report, Costa Rica has consistently condemned the crime of apartheid, in international forums.
>
> "56. On 4 July 1986, after taking into account a considerable number of ethical and legal reasons, the Government of Costa Rica decided to sever its diplomatic and consular relations with the Republic of South Africa.

"57. Since 1967, trade between Costa Rica and South Africa has been prohibited by law. Diplomatic relations have been kept at the lowest possible level. The consular offices of Costa Rica in South Africa have been closed. No recognition has been granted to the bantustans set up by South Africa as the 'sovereign' States of Transkei, Ciskei, Bophuthastswana and Venda and Costa Rica has maintained a firm position against the unlawful occupation of Namibia. Furthermore, on 25 June 1986, a petition was submitted to the Executive by the Legislature urging that relations with the racist regime of South Africa should be severed.

"58. On 4 July, the Government of the Republic issued a statement announcing the breaking off of relations and explaining the reasons. The text of this statement is as follows:

'OFFICIAL STATEMENT BY THE GOVERNMENT OF COSTA RICA

The Government of Costa Rica has decided to sever its diplomatic and consular relations with the Republic of South Africa because of the maintenance of the state of emergency imposed by the Pretoria regime, the continued practices of apartheid and the unwillingness of the Government of Pieter Botha to comply with the requirements of the international community set forth in United Nations Security Council resolution 569 (1985).

The Government of Costa Rica, in keeping with the position maintained over the years when it voted in United Nations forums in favour of resolutions that sought to eradicate apartheid once and for all, considers that the persistent refusal of the Government of South Africa to recognize the authority of the United Nations resolutions is at variance with Costa Rica's tradition of absolute respect for the full enjoyment of human rights. From the beginning of its existence as an independent nation, Costa Rica has sought to strengthen those principles and stated in its first Constitution, the provisional fundamental social covenant (1 December 1821), that all men were free and had the right to vote, thereby changing the situation created by the Spanish Constitution of 1821, which denied the right of citizenship to all persons of African descent.'

"59. A number of subsequent reforms again confirmed that principle and the Central American Federal Constitution of 30 November 1924 stipulated that: 'All men are free within the Republic; no one under the protection of its laws can be a slave nor can anyone engaged in the slave trade be a citizen.'

"60. The constituent bodies in 1949, interpreting this humanitarian sentiment of the previous century, stipulated the following in article 33 of the current Political Constitution:

'All persons are equal before the law and no discrimination whatsoever may be practised contrary to human dignity.'

These precepts are consistent with the spirit of the International Convention on the Elimination of All Forms of Racial Discrimination, which was signed on 13 March 1966 and ratified by Costa Rica through Decree No. 3844 of 16 December 1966.

"61. Costa Rica has sat for seven years on the Special Committee against Apartheid, when it has served alternately as Chairman and Vice-Chairman. At the fortieth session of the United Nations General Assembly held in New York between September and December 1985, it voted in favour of the following resolutions:

Resolution 40/64 A. Comprehensive sanctions against the racist regime of South Africa;

B. Situation in South Africa and assistance to the liberation movements;

C. World Conference on Sanctions against Racist South Africa;

D. Public information and public action against apartheid;

F. Programme of work of the Special Committee against Apartheid;

G. International Convention against Apartheid in Sports;

H. United Nations Trust Fund for South Africa;

I. Concerted international action for the elimination of apartheid.

"62. The above resolutions have as their objective the elimination of apartheid, considered by the United Nations to be a crime that violates the principles of international law, and in particular the purposes and principles of the Charter of the United Nations. In the repressive and dictatorial climate of the Pretoria regime and under the so-called state of emergency, thousands of people have been imprisoned or murdered for political reasons, including leaders of democratic organizations, community and church leaders, students and trade unionists. Others have been given very severe sentences because of their stand against apartheid.

"63. The Paris Conference, which discussed the topic of South Africa, adopted a final document on 20 June 1986 in which the participating States agreed on more effective economic measures to strengthen the voluntary measures already in existence and to apply an arms embargo. It should be mentioned that, since 1967, Costa Rica has banned any import or export trade with South Africa under Executive Decree No. 4015 of 9 December 1967. In other words, Costa Rica was two decades in advance of the political decision that we have just mentioned.

"64. In addition to the foregoing historical and political reasons that were fundamental for the exercise of Costa Rica's international policy over the years, in June 1986 the Legislative Assembly respectfully petitioned the Government of the Republic to break off diplomatic relations with the Government of South Africa.

"65. Because the South African regime flouts the fundamental principles of respect for human rights, Costa Rica decided to break off relations on 4 July 1986."

91. The main amendments to the legislation on racial discrimination drew on the Constitution, and Costa Rica's position on discrimination is based on article 33, which states: "All persons are equal before the law and no discrimination whatsoever may be practised contrary to human dignity". This last paragraph was added by virtue of Act No. 4123 of 30 May 1968 and, as can be inferred, the prohibition includes racial discrimination.

92. However, even before this provision was introduced, legislative measures had been adopted prohibiting the application of discriminatory policies. For example, in the labour legislation concerning employment or occupation, article 1 of Act No. 2694 of 22 November 1960 states:

"Any form of discrimination determined by any distinction, exclusion or preference made on the basis of race, colour, sex, age, religion, civil status, political opinion, national extraction, social origin, filiation or property which limits equality of opportunity or treatment in employment or occupation shall be prohibited."

Article 3 of the Act provides for the cancellation of any appointment, dismissal, suspension, transfer, exchange, promotion or acknowledgement which is made contrary to this Act. Article 4 indicates, furthermore, that any public servant who in the exercise of his duties is guilty of discrimination, shall be liable to eight days' suspension from his duties and to dismissal if he repeats the offence.

93. Subsequent to this Act, Act No. 2848 of 26 October 1961 adopted International Labour Organisation Convention No. 111 of 25 June 1958 concerning Discrimination in respect of Employment and Occupation. For the purpose of article 11 of that Convention, the term discrimination includes "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation".

94. Costa Rica continued to enact laws prohibiting discrimination, for example, Act No. 3170 of 12 August 1963, which approved the Convention against Discrimination in Education adopted by the General Conference of UNESCO on 14 December 1960. This Convention prohibits any discrimination on the ground of race, colour, sex, language, religion, political or other opinion: all distinctions which would destroy or impair equal treatment in the field of education.

95. Moreover, Act No. 3844 of 5 January 1967 approved the International Convention on the Elimination of All Forms of Racial Discrimination, which was signed ad referendum by Costa Rica on 13 March 1966 in New York.

96. From this legislation, it can be seen that the Government of Costa Rica recognized that apartheid constituted an offence and should therefore be suppressed and punished as such. However, the existing legislation was not sufficient for this purpose and further laws were enacted.

97. Again in 1967, Act No. 4015 of 9 December 1967 placed a ban on trade with the Republic of South Africa or the issue of licences or on arrangements for exports to that country, and it established a condition for lifting that ban. Article 3 of the Act stipulates that the prohibition "will be lifted as soon as the Government of South Africa puts an end to its policies of racial discrimination".

98. Beginning in 1968, several legislative amendments were adopted to penalize racial discrimination, with a view to bringing Costa Rican legislation into line with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination. Under Act No. 4230 of 21 November 1968, refusal to admit persons to associations, places of entertainment, hotels or the like, on the ground of race, was deemed a criminal offence. This Act was subsequently amended by Act No. 4466 of 19 November 1969, which extended the original list of establishments to include clubs and private educational institutions. It is important to note that Executive Decree No. 8-DM of 22 February 1968 establishes that 21 March shall be observed each year as the International Day for the Elimination of Racial Discrimination.

99. Further legislation prohibiting racial discrimination was also passed: Act No. 4573 of 4 May 1970 (Criminal Code) characterizes any conduct which violates human rights as punishable and article 371 provides that:

> "Any person, manager or director of an official or private institution or administrator of an industrial or commercial establishment who applies any prejudicial discriminatory measure based on considerations of race, sex, age shall be liable to 20 to 60 days' fine."

This offence (characterized as unlawful conduct) is described, as stated earlier, as a violation of human rights. All of this, is strengthened by the provisions of articles 2 and 7 of the Universal Declaration of Human Rights (quoted at the beginning). Article 7 states:

> "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

100. Article 26 of the International Covenant on Civil and Political Rights is very similar:

> "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language ..."

101. Again, Costa Rica's second periodic report (CCPR/C/37/Add.10) quotes article 3 of the Covenant, which speaks of the equal rights of men and women.

102. With respect to the equality of men and women as a political right, article 1 of the Electoral Code states that all Costa Ricans of either sex who are over the age of 18 and registered in the civil register of the electoral department are entitled to vote.

Protection of indigenous populations

103. Under Act No. 5251 of 19 June 1971, the National Indigenous Affairs Commission (CONAI) was established in order to guarantee the indigenous groups equal status and full enjoyment of human rights and fundamental freedoms. The Act was promulgated by Executive Decree No. 8487-G of 26 April 1978.

104. Further rejecting the various forms of discrimination, Costa Rica adopted Act No. 5360 of 11 October 1973, in which article 1 provides that: "All immigration restrictions based on considerations of race shall be prohibited". Act No. 6172 of 29 November 1977 was adopted to supplement above-mentioned Act No. 5251. It is also known as the Indigenous Affairs Act and strengthens the National Indigenous Affairs Commission, which is responsible, inter alia, for protecting the various ethnic groups against any form of discrimination.

105. On the occasion of the First World Congress on Human Rights, held from 6 to 12 December in the city of Alajuela, Costa Rica, a document known as the Alajuela Charter was issued and provides, for example that,

> "14. Political regimes based on discriminatory social, religious, political, linguistic, or economic concepts and practices or discriminating against national minorities on the grounds of sex or any other basis constitute a historical aberration and an inadmissible affront to the universal conscience and to the dignity of mankind."

106. It would be unrealistic to think that the legislation referred to above is sufficient to eliminate all existing inequalities. Hence the causes that can produce any kind of discrimination continue to be under scrutiny. For instance, Act No. 7024 of 17 March 1986 was adopted in order to protect indigenous populations who live in Costa Rica and who migrated there more than 40 years ago. They were identified and granted residence permits and any accumulated debts or residence taxes payable to the State were written off.

107. Barely a month ago, the Indigenous Identification Act was adopted to issue identity cards to the indigenous Guaymi population in particular, so that all persons born in Costa Rica now enjoy their political rights and are Costa Rican citizens. This indigenous group is extremely small, it is virtually nomadic and lives in the border area between Panama and Costa Rica, but, the Government has demonstrated its concern to integrate them into the country's development projects.

108. Generally speaking, the indigenous communities have schools and hospitals and, in addition, the Government pursues a policy of bilingualism in these areas. The University of Costa Rica's Faculty of Modern Languages has a department of Bri-Brí and Cabécar both of which are indigenous languages.

109. The Government of Costa Rica recognizes that the indigenous population is a marginalized group, but there is a policy to assist the group in its development. For example CONAI, was set up and operates with Government support, despite the country's economic problems.

110. It should also be noted that Costa Rica ratified the ILO Convention on Indigenous Communities.

111. The black population is fully integrated in the nation's political and economic development.

112. In Costa Rica, aspect of the various cultures and peoples are taught at the primary, secondary and university levels. From an early age, children are taught to accept the different minority and cultural groups and, in their civic education classes, they are told about the main principles and concepts of the international human rights instruments.

113. We consider discrimination to be an unjustifiable practice, and any attempt to maintain or introduce any legislation or practices fundamentally attributable to prejudice based on race, origin, culture, sex or religion, is inadmissible. In this connection, Act No. 7142 of 8 March 1990 was promulgated to promote the social equality of women. Obviously, the underlying principle of the Costa Rican people is that all human beings are born with the same nature and consequently with the same dignity, with the same rights and with the same fundamental obligations. Thus it has been guaranteed that everyone shall be equal before the law and have equal opportunities in the economic, cultural, civic, social and other areas of life.

114. As to the treatment of foreigners, the Government affords them protection during their stay in the country and provides guarantees in the event of expulsion. On that subject, Costa Rica's second periodic report on the International Covenant on Civil and Political Rights (CCPR/C/37/Add.10) stated the following:

"ARTICLE 13 OF THE COVENANT

...

"40. ... article 19 of the Constitution states the following:

'Article 19. Aliens have the same duties and rights, both individual and social, as Costa Ricans, subject to the exceptions and limitations established by this Constitution and by law.

They may not take part in the political affairs of the country and are subject to the jurisdiction of the courts of justice and of the authorities of the Republic; they may not have recourse to diplomatic protection save as provided in international agreements.'

"41. Again, article 31 of the Constitution provides for the right of asylum for nationals of other countries persecuted on political grounds and Costa Rica has signed and ratified the following international instruments:

The Inter-American Convention on Asylum (1928), which came into force on 21 May 1929.

The Inter-American Convention on Political Asylum (1933), which came into force on 28 March 1935.

The Inter-American Convention on Diplomatic Asylum (1954), which came into force on 29 December 1954.

The Inter-American Convention on Territorial Asylum (1954), which came into force on 29 December 1954.

The Convention relating to the Status of Refugees (1951), which came into force on 22 April 1954.

The Protocol to the Convention relating to the Status of Refugees (1966), which came into force on 4 October 1967.

The Convention relating to the Status of Stateless Persons (1954), which came into force on 6 June 1960.

The Convention on the Reduction of Statelessness (1961), which came into force on 13 December 1975.

"42. A special law regulates the procedure for extradition and affords a number of guarantees for the alien. Any request for extradition is considered and decided on by the Judiciary. The Constitution states that no Costa Rican shall be compelled to leave the national territory and in article 3 of the Extradition Act stipulates:

'Article 3. ... extradition shall not be offered or granted when a Costa Rican by birth or naturalization has committed a punishable act.'

"43. Costa Rica recognizes or identifies as refugees those persons who are outside their countries for the reasons stated in the 1951 Geneva Convention and 1967 Protocol, the Statute of UNHCR or the Cartagena Declaration on Refugees.

Around 350,000 Central Americans have requested asylum and refuge in Costa Rica. The Government of Costa Rica has had to plan a strategy to deal with this situation, based on our well-established tradition of asylum in over 160 years of constitutional life and on the international commitments undertaken on signing the conventions on asylum and on refugees, namely, the 1951 Geneva Convention and the 1967 Protocol thereto, ratified by the Government of the Republic in August 1967.

"44. The thousands of Central Americans who have come to Costa Rica are mostly civilians fleeing the fighting; many of them cannot be regarded as refugees, but as being in an intermediate situation, since they left their countries to escape from the armed conflict, although not all had a well-founded fear of persecution. Virtually all of them have a low level of formal education, major health and nutrition problems, a low cultural level and little training, all typical characteristics of a population which had been denied access to services and development in their countries of origin. As a result, the National Refugee Council has devised a plan for peasant refugees which includes not only assistance but integrates them into productive work so that they may progress economically and socially in the host country.

"45. This assistance is given in four phases:

1. Reception Centres: Their purpose is to provide persons who cross the border with emergency medical care, food and shelter. These centres are the first settlement of a person alleged to be a refugee and this is where the Costa Rican authorities make their initial assessment;

2. Transit Centres: In these centres, the refugee receives health care, food, education, shelter and is classified and documented. The main aim of these transit centres is to take care of the refugee for longer periods while his skills and training needs are assessed in order to equip him for integration into productive projects;

3. Active camps: This is where the group of refugees which has been duly chosen does basic productive work, mainly geared to training. The goal at this stage is to enable them to work towards self-sufficiency. This phase precedes their incorporation into national productive life through projects;

4. Productive projects: They represent the last phase of the refugee's incorporation into the productive life of the country to enable him to become self-sufficient.

"46. As a result of this situation, in 1982 the Government of the Republic, promulgated Executive Decree No. 13722-J, which set up the National Refugee Commission (CONAPARE). This Commission is attached to the Ministry of Justice and is composed of representatives of the Ministries of Justice, the Interior, Public Security, Foreign Affairs, Labour and Social Security as well as of the Costa Rican Red Cross, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Intergovernmental Committee for Migration (ICM).

"47. At the same time, a series of decrees was promulgated which provide for the participation of institutions in the different sectors regarded as being necessary to direct programmes and projects for integrating refugees in our country.

"48. The necessary legal framework was thus established for setting up by Executive Decree No. 16479-P, in September 1985, a specialized governmental body for refugee assistance, the Department for Refugee Protection and Assistance (DIGEPARE), attached to the Office of the President of the Republic. Its duties include legal, economic, social and administrative protection for refugees.

"49. With the agreement of a number of government institutions, migration procedures were laid down for the recognition of refugee status and a specialized office was created and attached to the Migration Department. Furthermore, within the national context, two areas of refugee assistance have been identified according to the refugees' place of origin. One group is that of urban refugees and it is cared for by an executing agency called CASP/RE and the other is that of the rural population and it is cared for by three executing agencies, namely: the Red Cross, CIR and CASP/CAMP, which work in the established centres.

"50. The institutional system for refugee care includes initial assistance and subsequently the individual's incorporation into productive projects which help him to become self-sufficient. There are 35,000 refugees registered in Costa Rica and, in addition, hundreds of thousands of displaced Central Americans without papers who have been admitted on humanitarian grounds.

"51. In order to solve this problem, on 3 October 1987 in the city of Managua the Governments of Costa Rica and Nicaragua, under the Esquipulas Agreement, signed an agreement on voluntary repatriation with the participation and valuable cooperation of the Office of the United Nations High Commissioner for Refugees (UNHCR). The Tripartite Commission met for the first time on 29 October 1987."

115. Costa Rica has furthered the interests of the population and protected it against heinous practices. It has established the appropriate machinery to which all citizens may appeal to safeguard their rights. Institutions specifically concerned with human rights include those mentioned below.

Office of the Ombudsman for Human Rights

116. The Office of the Ombudsman for Human Rights was established under Act No. 7142 of 2 March 1990 in order to safeguard the human rights of all the inhabitants and in particular the rights of women, minors and consumers. The Office of the Ombudsman is attached to the Ministry of Justice, and other ombudsman's offices which had already been established by Executive Decree were brought under its umbrella.

117. The functions assigned to the Office under the Act include:

(a) Interceding in respect of threats, obstruction or violations of citizens' rights;

(b) Taking preventive measures and making recommendations to prevent abuses;

(c) Mediating and interceding with the authorities to protect citizens' rights;

(d) Recommending sanctions against any officials who commit serious violations of citizens' rights;

(e) Advocating legal reform so as to protect citizens' rights more efficiently and to improve the relevant public service;

(f) Making citizens' aware of their rights;

(g) Receiving and investigating complaints, either ex officio or on request, and forwarding them to the appropriate authorities;

(h) In general, taking all possible steps to prevent violations of citizens' rights and ensure that they are fully observed;

(i) Promoting continuous examination of the causes of the inequality of women, and proposing preventive measures.

118. The Office of the Ombudsman for Human Rights comprises the Office of the Ombudsman for Women, the Office of the Ombudsman for Children, the Office of the Consumer Ombudsman and the Office of the Prison System Ombudsman.

Office of the Ombudsman for Women

119. The Office of the Ombudsman for Women was initially set up under an executive decree on 1 August 1989. However, as a result of the entry into force of the Act for the Promotion of the Social Equality of Women (No. 7142 of 2 March 1990), the Office was strengthened, not only because of the reason for altering its legal status, but also the fact that the Act made it part of a broader, systematic human rights programme.

120. The functions of Office of the Ombudsman for Women are as follows:

(a) To ensure compliance with all declarations and conventions and with all laws, regulations and administrative provisions relating to the rights of women;

(b) To investigate, either ex officio or on request, any acts or omissions that infringe the rights of women, to make recommendations and to propose the appropriate sanctions to the relevant authorities;

(c) To prevent violations of the rights of women by taking the appropriate action and making recommendations to the competent authorities;

(d) To propose legal reforms to ensure protection of the rights of women;

(e) To strive to improve public and private services to assist women;

(f) To intercede in legal proceedings if it considers that discrimination may have been practised against women;

(g) To take action before the administrative authorities to protect the rights of women;

(h) To encourage the Legislative Assembly to ratify any international convention that guarantees women's rights;

(i) To ensure that public and private institutions do not practise gender-based discrimination and to ensure that women are given fair treatment;

(j) To encourage continuous examination of the causes of the inequality of women in order to propose preventive measures.

Office of the Ombudsman for Children

121. This Office was established under Executive Decree No. 177733-5 of 9 November 1987 and is noteworthy for being the only children's ombudsman in Latin America at this time. The Office is highly flexible and receives and investigates complaints from citizens and from minors concerning injustices that undermine the rights and the status of children. It does not replace any of the police, judicial or administrative bodies responsible for children, and its powers are as follows:

(a) To receive complaints and to investigate them, either ex officio or on request and to forward them to the appropriate authorities;

(b) To prevent violations of the rights of children by taking action and making recommendations to the appropriate public authorities;

(c) To propose reforms to procedure, regulations or laws in order more efficiently to defend the above rights and to strive to improve public child care services;

(d) To mediate and intercede with the authorities to defend children's rights;

(e) To publicize the situation and needs of children through the following channels: the mass media, publications, seminars, conferences, etc.;

(f) To foster awareness of children's rights;

(g) In general, to encourage public figures and private individuals to work with and on behalf of children;

(h) To identify priorities to which the human and material resources of bodies and institutions catering for the needs of minors should be directed.

Chapter IV

REFORM OF COSTA RICAN LEGISLATION

A. Reform of article 48 of the Constitution

122. Prior to this reform, article 48 was as follows:

"TITLE IV

Rights and guarantees of the Individual

SOLE CHAPTER

Article 48. Any one who considers that he is unlawfully deprived of his freedom has the right to the remedy of habeas corpus. This remedy lies within the exclusive jurisdiction of the Supreme Court of Justice and it shall be open to the Court to order that the aggrieved party be produced, something which may not be prevented on grounds of due obedience or other excuse.

To maintain or restore enjoyment of the other rights embodied in the present Constitution, anyone shall, in addition, enjoy the remedy of amparo, which shall be within the competence of the courts determined by law."

123. Following the reform, the article reads:

"Everyone has the right to the remedy of habeas corpus to guarantee his personal freedom and integrity, and to the remedy of amparo to preserve or restore enjoyment of other rights set out in the present Constitution, as well as the fundamental rights laid down in the international human rights instruments applicable in the Republic. Both remedies shall lie within the jurisdiction of the court specified in article 10."

124. At the same time article 10 of the Constitution was amended to establish, as part of the Supreme Court of Justice, a Constitutional Court consisting of seven judges. It has jurisdiction over actions of unconstitutionality and also remedies of habeas corpus and of amparo. Actions of unconstitutionality and of habeas corpus previously came within the jurisdiction of the Supreme Court of Justice in full session, while jurisdiction over amparo was shared by the Supreme Court, which was responsible when high-ranking officials were involved, and by criminal judges in the case of low-ranking officials.

125. The advantage of this change, made under Act No. 7128 of 18 August 1989, is that it settles the long-standing dispute over priority between the provisions of domestic law and those of international law in respect of human rights. Costa Rica had argued that international law took precedence over domestic law, but not over the Constitution. As a result of the new wording of article 10, which provides a foundation for suits to safeguard fundamental rights, both the rights set out in the Constitution and those contained in international instruments come under the jurisdiction of the same authority

and the difference between them has been done away with. As a result, it can be said that human rights treaties have acquired the same status as constitutional norms. Moreover, the specialized nature of the Court has proved beneficial, as it has changed the case law laid down by its predecessor, and given a broader and more sympathetic interpretation to the arguments for the protection of human rights.

126. As part of the movement to change the system of human rights protection, Act No. 7135 (Constitutional Jurisdiction Act) was adopted on 11 October 1989. This Act established the appropriate procedure for actions brought in the Constitutional Court. Article 2, which establishes jurisdiction, restates the concept underlying the change in article 48 of the Constitution and stipulates that protection covers not only the rights set out in the Constitution, but also those recognized by international law applicable in Costa Rica.

127. The remedy of amparo is regulated in title III, chapters I and II, articles 29 to 65, and allows an action for amparo to be brought not only against the State authorities, but also against subjects of private law if they act or are required to act in a public capacity or if they are in a position, either de jure or de facto, that makes ordinary legal remedies clearly inadequate or too dilatory to guarantee fundamental rights or freedoms.

128. Furthermore, title II, articles 15 to 28 regulates the remedy of habeas corpus and preserves its specificity as a means of protecting "personal freedom and integrity". It should also be pointed out that article 28 of the Act stipulates the procedure to be followed if one remedy applies rather than the other, and allows either remedy to be replaced by the other, if appropriate.

129. The inherently summary nature of amparo and habeas corpus proceedings, is preserved and the relevant procedure is extremely simple. Once the application has been declared admissible, a report is requested from the person against whom it is directed; the person concerned then has up to three days to produce the report, after which the necessary evidence is heard and the application is settled by a decision against which there is no appeal.

B. Act on the Social Equality of Women and the Establishment of the Office of the Ombudsman for Human Rights

130. The Act on the Social Equality of Women and the Establishment of the Office of the Ombudsman for Human Rights was signed by the President of the Republic on 8 March 1990. The Act vests responsibility for ensuring the equal rights of men and women in the State, and makes references to the Convention on the Elimination of All Forms of Discrimination against Women.

131. The main provisions of the Act include:

(a) An obligation on political parties to amend their statutes in order to promote effective participation by women in internal election processes, on the administrative bodies of the parties and on ballot papers in order to eliminate discrimination in politics. A further stipulation is that discrimination is to be eliminated from the exercise of public office;

(b) A stipulation that housing assigned under social development programmes is to be registered in the name of both spouses if they are married, and in the name of the woman if they are an unmarried couple;

(c) A requirement to establish a network of children's centres to care for the children of working mothers and a stipulation that complaints relating to sexual offences are to be made, wherever possible, direct to the judicial authorities in order to ensure prompt initiation of proceedings against offenders;

(d) A ban on educational texts which refer to "social roles" that are inconsistent with equality, such as texts which solely portray women as domestic workers. Another requirement is that sports facilities must meet the recreational needs of both men and women.

132. The Act establishes the Office of the Ombudsman for Human Rights, with responsibilities that include protection of the rights of women.

133. The Act introduced changes in the Labour Code, the Civil Code, the Code of Criminal Procedure and Family Code. The aim of the changes in the Family Code was to regulate home ownership and ensure that no lien could be placed upon a home without the consent of both spouses and to limit claims by creditors of only one of the spouses. The amendment to the Labour Code was designed to prevent the dismissal of pregnant women, except in the event of serious negligence and subject to prior authorization from the Ministry of Labour.

134. The Civil Code was also altered to regulate common law marriages and to establish joint parental authority over the administration of children's property. The Code of Criminal Procedure was amended to allow a court to order a person accused of sexual offences or of injuring a woman with whom he lives to leave the home and to accept responsibility for alimony for the members of the family, which is secured by a judicial bond.

135. The Effective Equality Act, as it is called, constitutes a comprehensive programme of measures to do away with various persistent forms of social discrimination in Costa Rica. The Act is the outcome of four years of efforts by feminist activists under the leadership of Mrs. Margarita Penón de Arias, the former First Lady of the Republic, who was the driving force behind its adoption. It is too early to assess its potential impact, but it is a clear demonstration of the serious commitment of Costa Ricans to this issue.

Chapter V

NATIONAL LEGISLATION AND CASE LAW

136. The method adopted for this chapter involves a comparison between some of the provisions and articles of the International Convention on the Elimination of All Forms of Racial Discrimination, referred to as "the Convention", and Costa Rican legislation and case law.

137. The Convention calls for:

> 1. Respect for and State protection of all individuals within the national territory as regards the enjoyment and exercise of their human rights, without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

138. The relevant national legislation and case law is as follows:

(a) Article 1 of the Constitutional Jurisdiction Act

The purpose of this Act is to regulate constitutional jurisdiction, the aim being to ensure the supremacy of constitutional norms and principles and of international or community law applicable in the Republic, so that it is uniformly interpreted and applied, and to safeguard the fundamental rights and freedoms set out in the Constitution or in the international human rights instruments that apply in Costa Rica.

(b) Article 3 of the Constitution

"All persons are equal before the law and no discrimination whatsoever may be practised contrary to human dignity" (as amended by Act No. 4123 of 31 May 1968). Cited in the text of the report.

139. The Convention calls for:

> 2. Adoption of such legislative or other measures as may be necessary to give effect to the rights recognized.

140. The relevant national legislation and case law is as follows:

(a) Article 7 of the Constitution

"Public treaties, international conventions and agreements duly approved by the Legislative Assembly shall, from the time they are enacted or from the day they specify, have higher authority than the laws. Public treaties and international conventions relating to territorial integrity or the political organization of the country must be approved by the Legislative Assembly, by a vote of no less than three-fourths of the members of a constituent assembly convened for the purpose" (as reformed by Act No. 4123 of 31 May 1968).

(b) Decision of the full Court, special session, 8 October 1987

"Under the provisions of article 7 of the Constitution, public treaties and international conventions shall have higher authority than the laws, so that no ordinary law may justifiably challenge the provisions of an international treaty or agreement."

(c) Decision of the full Court, special session, 22 May 1986

"... if there is a conflict between a treaty and a law, it is irrelevant which precedes and which follows: the treaty shall always prevail because it has 'higher authority than the laws'". It is obviously easier to resolve the problem when the treaty is subsequent to the law, on the basis of the principle contained in article 129, paragraph 5, of the Constitution, that the later law supersedes the earlier law. But in fact the solution is the same even when the ordinary law is subsequent to the treaty with which it conflicts: the treaty prevails over the law because it has higher authority, as confirmed by the above-mentioned recent reform of article 2 of the Civil Code, to the effect that, "Provisions which conflict with another provision of a higher rank shall not apply".

141. The Convention calls for:

3. The possibility of an effective remedy against violations of the rights and freedoms granted in the area of human rights.

142. The relevant national legislation and case law is as follows:

(a) Article 48 of the Constitution

"Everyone has the right to the remedy of habeas corpus to guarantee his personal freedom and integrity, and the remedy of amparo to preserve or restore enjoyment of other rights set out in the present Constitution, as well as the fundamental rights laid down in the international human rights instruments applicable in the Republic. Both remedies shall lie within the jurisdiction of the court specified in article 10" (the Constitutional Court).

(b) Decision of the First Court, 31 July 1987

"... in accordance with the provisions of article 48, paragraph 3, of the Constitution, 'to preserve or restore the enjoyment of other rights set out in the present Constitution', everyone is assisted by the remedy of amparo. This constitutional rule refers in broad terms to 'other rights', without restricting amparo to a particular set of constitutional rights, such as those in title IV of the Constitution relating to Personal Rights and Guarantees, because it is obvious that certain other provisions of the Constitution also grant citizens rights which, as such, may be protected through amparo. It is understood, however, that the rights involved must directly concern the individual and be prejudiced by acts of employees of the Public Administration, and that no other type of situation applies, since amparo is not designed for the general interest alone; government bodies must gear their task to the provisions of the Constitution."

(c) Decision of the First Court, 31 January 1986

"It has repeatedly been ruled that, in order to protect the rights conferred on individuals by the Constitution, article 48 sets out a two-fold guarantee: the remedy of habeas corpus, if someone believes he is illegally deprived of his liberty - the scope being determined in article 1 of Act No. 35 of 24 November 1932, and the remedy of amparo to preserve or restore the enjoyment of other rights, which is governed by Act No. 1161 of 2 June 1950. Although, in accordance with our institutional system, these two guarantees differ as to which rights they protect, they coincide in that both are aimed at protecting the rights of the individual set forth in the Constitution."

(d) Decision of the First Court, 31 January 1986

"It should be borne in mind that the remedy of amparo is not intended to resolve problems relating to legal validity or effectiveness, which should be settled through a different procedure, because otherwise the remedy would be distorted and turn into a check on legality and not of constitutionality. Thus, amparo relates solely to acts by any authority, official or employee violating or threatening to violate the rights laid down in the Constitution."

(e) Decision No. 48-90. Constitutional Court, division of the Supreme Court of Justice, 12 January 1990

"Article 48 of the Constitution lays down the remedy of amparo as a suitable measure to preserve or restore enjoyment of rights other than the rights to personal freedom and integrity, laid down in the Constitution, and those fundamental rights laid down in international human rights instruments applicable in the Republic ...".

(f) Decision of the full Court, special session, 26 April 1984

"... Thus, it is through legal means that the parties may request protection for a right that is undermined or at issue, by requesting the court to take the relevant measures and intervene as necessary to guarantee them legitimate use of that right. The laws in general are designed to protect the prerogatives of every individual, in both the sense of governing personal rights and of establishing a suitable formal mechanism to enable people to have access to the courts; and the courts, with sufficient authority, restore the rule of law and administer justice, if any wrongdoing is proven. Justice shall be prompt and effective, without refusal, but in strict conformity with the laws ... That is to say, in order to sue for the enforcement of all these legal principles, the parties must submit to a previously-established procedure. The judge may not act at his discretion, because he must also respect a standard laid down by the laws themselves, which stem from an overriding law, the Constitution. All must be done for the benefit of the parties and must guarantee the proper administration of justice. Only when access to justice is actually denied can the laws which, in themselves, produce these effects become unconstitutional."

(g) Decision of the full Court, special session, 2 May 1952

"... article 48 of the Constitution ... establishes that guarantee (the remedy of amparo) for all the rights that the guarantee protects - both the rights of the individual and also when a regulation that restricts a right expressed in broad terms in the Constitution openly conflicts with the Constitution and is arbitrary."

(h) Decision No. 44 of the full Court, special session, 31 July 1958

"Amparo is essentially a means of protecting the people from certain arbitrary acts, whether in the process of being committed or already committed, by members of the public administration, when they are acting chiefly in accordance with their discretionary powers."

(i) Article 29 of the Constitutional Jurisdiction Act

"The remedy of amparo guarantees the fundamental rights and freedoms covered in this Act, with the exception of those protected by the remedy of habeas corpus. The remedy of amparo applies against any provision, agreement or decision, and in general any action, omission or simple physical act not based on a valid administrative act, by public servants and public bodies, that has violated, violates or threatens to violate any of those rights. Amparo is applicable not only against arbitrary acts, but also against actions or omissions based on erroneously-interpreted or improperly applied rules."

(j) Article 33 of the Constitutional Jurisdiction Act

"Any individual may file an application for amparo."

(k) Article 18 of the Constitutional Jurisdiction Act

"An application for habeas corpus may be filed by anyone, in a petition, telegram or other written means of communication, with no need for authentication. When telegraphy is used, the application shall be exempt from tax."

(l) Article 49 of the Constitutional Jurisdiction Act

"When the contested act is of a positive nature, a decision to grant amparo shall be aimed at restoring or guaranteeing full exercise of his right to the injured party and restoring the situation that obtained before the violation, whenever possible. If amparo has been stipulated in order for an authority duly to fulfil or execute a requirement of a law or other regulation, said authority shall have two months to fulfil the provision. When the contested act is a refusal to perform an act or an omission, the decision shall stipulate that it shall be carried out, for which a reasonable but strict deadline shall be granted. If actual behaviour or a physical act is at issue, or a threat, those responsible will be ordered to cease immediately and to avoid any further violation or threat, disturbance or similar limitation. In any event, the Constitutional Court shall lay down the other consequences of the decision in each case."

(m) Article 50 of the Constitutional Jurisdiction Act

"If, at the time amparo is allowed, the effects of the act at issue have ceased, or if the act has been carried out in such a way as to make it impossible to restore to the claimant the enjoyment of the right or freedom violated, the decision shall contain a warning to the public servant or body not to commit the acts or omissions which gave rise to the remedy and that, otherwise, he or it will be committing the offence and punishable under article 71 of this Act, without prejudice to any liability already incurred."

(n) Article 63 of the Constitutional Jurisdiction Act

"If, at the time amparo is allowed, the effects of the act at issue have ceased, or if the act has been carried out in such a way as to make it impossible to restore to the injured party the enjoyment of his right, the decision shall warn the offender that he must not commit acts or omissions equal or similar to those that gave rise to the remedy and will sentence him in the abstract to reparation of the damages caused and payment of costs, in application of the provisions contained in the previous article. The foregoing is without prejudice to any other civil or criminal liability applicable."

(o) Article 71 of the Constitutional Jurisdiction Act

"Anyone who receives an order which he must fulfil or have fulfilled, as part of an amparo or habeas corpus proceeding, and does not fulfil it or have it fulfilled, shall be liable to a prison term of three months to two years, or 20 to 60 days' fine, provided that the offence does not carry a heavier penalty."

(p) Article 72 of the Constitutional Jurisdiction Act

"Anyone who causes a new application for amparo or habeas corpus to be filed because the same acts, omissions or threats that were the basis for a previous award of amparo have again been committed against the same persons, shall be liable to a prison term of six months to three years, or 60 to 120 days' fine."

143. The Convention stipulates that:

> 4. Work is a right of the individual and a responsibility of the State.

144. The relevant national legislation and case law is as follows:

(a) Article 56 of the Constitution

"Work is a right of the individual and an obligation towards society. The State shall endeavour to ensure that everyone has honourable, useful and properly remunerated employment, and that employment shall not result in the establishment of conditions which in any way detract from the freedom or dignity of man or reduce his labour to the status of a mere commodity. The State shall guarantee the right freely to choose employment."

(b) Decision of the First Court, 6 January 1986

"It is alleged that there has been a violation of article 56 of the Constitution because, according to the appellant, she was informed that the Ministry of Public Works intends to close partially or totally the national highway linking her neighbourhood with another population centre, which violates not only freedom of movement but also the right to work in the transport of agricultural and industrial products. As repeatedly stated (see the same Court's decisions Nos. 43, 58, 112, 113, 136 and 153, all of 1981, and No. 7 of 1984), article 56 of the Constitution makes a two-fold statement: on the one hand, that work is a right of the individual, and on the other, that the State shall guarantee the right freely to choose employment. Together they constitute what is termed "freedom of work", which may be invoked against any abuse or restriction that the authorities might try to impose. This guarantee enables the citizen to choose, from among the multitude of lawful occupations available, the one that best suits him for his well-being and obliges the State not to force him to engage in a particular activity. Furthermore, inasmuch as it is incumbent on the State to ensure useful and honourable, properly remunerated employment for all, it is an explicit political duty of the State, which the legislature must ensure, but it does not represent a subjective right of the citizen. Thus, strictly speaking, we do not find that the appellant's right has been injured, since neither the Minister nor the Ministry staff have committed an act or omission that prevents the appellant from doing honest work best suited to her interests nor have they forced her to do a particular job."

(c) Decision of the full Court, 28 January 1982

"... the rules contained in article 56 do not prevent the State, for reasons of public interest, from laying down rules for professional practice, especially where the health sciences are concerned. Such regulations are required for reasons that go far beyond the scope of the interests of the person as an individual ... the right to work and freely to choose employment cannot be unrestricted, since freedoms must also be governed by rules; and when interests of public order intervene, it is lawful for the State to set requirements that will ensure the effectiveness of the service involved."

145. The Convention's stipulations:

5. With regard to foreigners.

146. The relevant national leglislation and case law is as follows:

(a) Article 19 of the Constitution

"Aliens have the same duties and rights, both individual and social, as Costa Ricans, subject to the exceptions and limitations established by this Constitution and by law. They may not take part in the political affairs of the country and are subject to the jurisdiction of the courts of justice and of the authorities of the Republic; they may not have recourse to diplomatic protection, save as provided in international agreements."

(b) Article 31 of the Constitution

"The territory of Costa Rica shall afford asylum to any person persecuted for political reasons. If the expulsion of such a person is ordered for overriding legal reasons, he may in no case be sent to the country where he was persecuted. Extradition shall be regulated by law or by international treaties and shall on no account be applicable in the case of political or related offences, as defined by Costa Rican law."

(c) Decision No. 12-89 of the Constitutional Court, division of the Supreme Court of Justice, 6 October 1989, with a dissenting opinion by Rodolfo Piza Escalante

"... as said before, it is not that reasonable distinctions between nationals and foreigners, and therefore between persons of good or bad behaviour, are not legally possible, since the Constitution itself and the international instruments authorize such distinctions either explicitly or implicitly; what we are saying is that it is not constitutionally or morally lawful to subject anyone - innocent or guilty, a national or a foreigner - to unjustified inequalitity or discrimination, or to seriously detrimental punishment or measures, such as annulment of their legal status as residents, or deportation or expulsion from the national territory, much less arbitrary or unnecessary detention, without granting and respecting the fundamental rights and freedoms to which they are entitled simply because they are human beings, even though their conduct may be more or less disgusting."

(d) Decision of the full Court, 5 July 1984

"Although foreigners have the same personal and social rights as Costa Ricans, the Constitution itself authorizes exceptions and limitations to be imposed by law on foreigners ... This does not mean that those exceptions or limitations in any way nullify the guarantee laid down in the Constitution."

(e) Decision of the full Court, 12 November 1984

"... since, in conformity with the Court's rulings in similar cases, the arrest of foreign citizens who are in the country illegally is the physical means of ensuring that they are expelled ..."

(f) Decision of the full Court, 19 August 1983

"It is the Executive's prerogative to grant or refuse foreigners permanent residence in the country. For this reason, although it is true that foreigners have the same personal and social rights as Costa Ricans, that rule does not grant them the absolute right to obtain indefinite residence in any case, since article 19 grants such equality "subject to the exceptions and limitations established by this Constitution and by law", and in this Court's understanding, the law may establish different rules for treatment as between nationals and foreigners (special session of the full Court No. 32, 27 June 1963; considering resolution V, No. 34, of 4 June 1982)."

147. The Convention's stipulations:

6. With regard to incitement to racial discrimination.

148. The relevant national legislation and case law are as follows:

Article 385 of the Criminal Code

"Anyone who posts up in public places, publishes in the press or deliberately distributes written material inciting to hatred against a particular person or institution shall be liable to 10 to 15 days' fine. The following shall not be considered to be part of such a character: writings which, although capable of discrediting an institution are aimed at a reasoned criticism of it, in terms of the public interest, nor shall writings relating to the merits of proposed candidates for a popular election, provided they do not use offensive or libelous ideas."

149. The Convention's stipulations:

7. With regard to discrimination.

150. The relevant national legislation and case law is as follows:

(a) Article 33 of the Constitution

"All persons are equal before the law and no discrimination whatsoever may be practised contrary to human dignity. (Revised by Act No. 4123 of 31 May 1968)."

(b) Decision of the full Court, special session, 4 April 1987

"The noun "hombre" is understood to mean "person", natural or legal, and refers to both men and women. The guarantee of equality means a prohibition on different treatment under equal circumstances, but not when the circumstances are different. Similarly, both legal theory and case law have found that the principle of equality before the law consists of no difference between two or more persons who are in the same situation but that this principle is not infringed if the circumstances are unequal, because in that case the principle that it is unfair to give the same treatment under different circumstances would prevail. Applying a criterion of equality under unequal circumstances would run counter to article 33, because in that case the equality which the law establishes under those conditions would turn into unequal treatment for those entitled to have the law recognize their different circumstances. Thus, equal treatment of persons in unequal circumstances has been rightly considered the greatest injustice. Thus, to place things in their proper perspective, it must be inferred that the principle of equality set out in article 33 of the Constitution is also infringed in cases of equal treatment in different, unequal circumstances. (The full Court handed down similar decisions on 15 June 1976, 4 March and 11 November 1982, 21 November 1985 and 22 May 1986)."

(c) Decision of the full Court, 26 March 1986

"Article 33 of the Constitution, as amended under Act No. 4123 of 31 May 1968, stipulates that 'All persons are equal before the law and no discrimination whatsoever may be practised contrary to human dignity'. The Act amending this article added the phrase 'and no discrimination whatsoever may be practised contrary to human dignity' to the rule initially laid down by the Constituent Assembly of 1949. For the purposes of ruling on the present application, it should first be established whether the guarantee of equality before the law provides protection only in respect of discrimination that is contrary to human dignity or whether, indeed, it also encompasses other differences affecting other matters, and if the former proves to be the case, whether the discrimination permitted by article 3 of the Notary Act is prejudicial to human dignity. In the opinion of this Court, the addition of the phrase "and no discrimination whatsoever may be practised contrary to human dignity" was not intended to restrict the scope of article 33 of the Constitution, since the reference to human dignity is simply an application, perhaps the most important, of the general principle of equality, which was the criterion indicated by the legislature when it proposed the bill that became Act No. 4123, namely: 'Although the principle of equality before the law has been sufficient to give Costa Ricans a legal order in which overt forms of discrimination do not occur, we believe it is essential to add a broad statement to this effect, in order to bring our Constitution into line with the language of the Universal Declaration of Human Rights and avoid any future occurrence of cases of discrimination'. Hence, the protection set out in article 33 must be viewed in terms of all discrimination and not only in terms of discrimination prejudicial to human dignity, which makes it unnecessary to determine whether or not the discrimination permitted by article 3 of the Notary Act is prejudicial to human dignity."

(d) Decision of the full Court, special session, 27 June 1963

"The principle of equality before the law is not absolute, since it does not grant a right to be enjoyed by any individual on an equal basis with no distinction as to circumstances; rather, it requires the law not to make distinctions between two or more persons in the same legal situation or in identical circumstances, that is, equal treatment cannot be sought when the conditions or circumstances are unequal."

(e) Decision of the full Court, special session, 27 November 1980

"The principle of equality laid down in article 33 of the Constitution is not absolute, since it does not grant a right to be enjoyed by any individual on an equal basis with no distinction as to circumstances; rather, it requires the law not to make distinctions between two or more persons in the same legal situation or in identical circumstances, that is, equal treatment cannot be sought when the conditions or circumstances are unequal."

(f) Decision of the full Court, special session, 27 June 1957

"The legal equality laid down in this constitutional rule implies equal treatment under identical conditions and cannot be considered as preventing the enactment of legislation aimed to consider and resolve problems relating to or affecting groups of persons or persons in the same circumstances. (See also, along the same lines: 1951. Full Court, special session 42, 9 August, Official Gazette, 13 September)."

(g) Decision of the full Court, special session, 28 June 1982

"... thus, the civil procedural regulation which exempts the State from the obligation to guarantee costs does not breach article 33 of the Constitution, because the principle of equality before the law means an obligation to give the same treatment and hence a prohibition on different treatment when conditions or circumstances are equal, but not when, as in this case, the State and the individuals involved could in no way be considered as being at the same level or in the same circumstances."

(h) Decision No. 12-89 of 6 October 1989, with a dissenting opinion by Rodolfo Piza Escalante

"... but it is not sufficient for a restriction to be established by law in order for it to meet the requirements of the Constitution, and still less those of international human rights law, which have now been explicitly incorporated in article 48 and for which the not-unlawful distinctions between certain persons and others (innocent and guilty, nationals and foreigners) are very few and only those that can be unequivocally justified (as in the case of political rights) because, generally speaking, freedom and fundamental rights belong to all people by the mere fact that they are human beings - with equality and without discrimination (see especially articles 2 and 26 of the International Covenant on Civil and Political Rights of 16 December 1966 - Act No. 4229 of 11 December 1968, articles 1 and 24 of the American Convention on Human Rights of 22 November 1970, article 2 of the American Declaration of the Rights and Duties of Man of 5 May 1948 and articles 1, 2 and 7 of the Universal Declaration of Human Rights of 10 December 1948, the last two being part of general international law, and therefore binding erga omnes).
5. Without going into the constitutionality of the Act relating to Migration and Foreigners, it is true that the Act grants the Executive and, within it, the Minister of the Interior and Police, more or less discretionary powers to evaluate the behaviour or situation of foreigners living in the country, to cancel their status under certain circumstances, to deport them or expel them and even order them to be placed in administrative detention ... but these purely legal powers, although extremely discretionary, can neither be exercised with disregard for the general rights of equality and non-discrimination, which, as stated above, are granted to foreigners by the Constitution and international law, nor be unrestricted or unjustifiable, because this would be tantamount to openly replacing the law with arbitrariness ...".

ANNEXES**

1. CONSTITUTION OF THE REPUBLIC OF COSTA RICA.

2. "PROJECT APPLICATION BY THE GOVERNMENT OF COSTA RICA TO THE UNITED NATIONS FUND FOR POPULATION ACTIVITIES". RE: NATIONAL INDIGENOUS CENSUS.

3. "LEY INDIGENA DE COSTA RICA" (INDIGENOUS LEGISLATION OF COSTA RICA): COMPILATION BY RUBEN CHACON CASTRO, 2nd EDITION, 1990.

4. "PROTECTION OF INDIGENOUS RIGHTS IN COSTA RICA". (LISTING OF THE REGULATORY EXECUTIVE DECREES). RUBEN CHACON CASTRO. CONAI, JULY 1988.

5. "ACTION ON BEHALF OF INDIGENOUS PEOPLES IN COSTA RICA". 2nd EDITION. CONAI, ANANIAS MATAMOROS CARVAJAL, 1990.

6. "INDIGENOUS RESERVATIONS IN COSTA RICA". 2nd EDITION, LUIS A. TENORIO A; 1988.

7. "NATIONAL COMMISSION FOR INDIGENOUS AFFAIRS, 10th ANNIVERSARY, 1973-1983". CONAI ACHIEVEMENTS AND OBJECTIVES. REPORT BY THE GOVERNING BOARD. JULY 1983. RE: ESTABLISHMENT OF CONAI.

** Copies of these documents, in Spanish, are available in the Secretariat files for the members of the Committee who wish to consult them.